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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1957.

No. 16 Original.

STATE OF MISSOURI,
Plaintiff,

vs.

STATE OF NEBRASKA,
Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND AMENDMENT TO COMPLAINT.

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INDEX.

Page

Plaintiff's Response to Defendant's Brief in Opposition to Motion for Leave to File Complaint and Amendment to Complaint 1

Conclusion 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1967.

No. 32 Original.

STATE OF MISSOURI,
Plaintiff,

vs.

STATE OF NEBRASKA,
Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND AMENDMENT TO COMPLAINT.

The State of Missouri seeks leave to file an original action against the State of Nebraska concerning the location of their common boundary.

Nebraska in its brief in opposition, asks that the court deny leave upon the grounds taken up and disposed of herein below.

I.

The complaint states an action cognizable in this court.

The first four reasons given by the State of Nebraska for denying relief herein, though couched in vague generalities, seem to express a brief that no controversy is pleaded.

This simply is not true. The complaint clearly alleges that the Missouri River is the Boundary between the states and that various Nebraska governmental units and courts are declaring that certain Missouri lands adjacent to the river belong to Nebraska.

It is manifest that the State of Nebraska admits the jurisdiction of this court and only argues against the exercise of that jurisdiction.

Admittedly, as stated by Nebraska, apparently as the mainthrust of its argument against the court's exercise of its jurisdiction, this Court encourages adjustment—i.e., interstate legislative compacts—between boundary disputing states. However, as stated in Hinderlider v. LaPlate Co., 304 U.S. 92, there are "... two means provided by the Constitution for adjusting interstate controversies." In addition to detailing and expressing satisfaction with the legislative compact method the Court is clear in observing that resort to the Court is essential where the states "... are unable to agree upon the terms of a compact, or Congress refuses its consent." (Hinderlider, 304 U.S. at p. 105.)

Although attempts at settlement and failure to agree are not essential prerequisites to instituting such interstate legal action, in keeping with the wishes of this Court and good common sense, in point of fact such attempts have been made and are alluded to in the complaint and statement in support of the motion for leave to file the complaint.

There was, as alleged by Nebraska, a meeting between the former Governors of the two states, the former Attorney General of Missouri, the present Attorney General of Nebraska and their advisors. The meeting was held in 1961

for the purpose of trying to work out some means of persuading the local Nebraska people to refrain from continuing their attempts to seize Missouri lands (there being no corresponding adverse Missouri claims) and it was agreed that the Nebraska officials would exert such local influence as they possessed in that connection but the adverse claims have not been relinquished for the obvious reason that the Nebraska State executive officials do not control the local governmental officials and courts.

Furthermore, both states have enacted compact legislation with respect to the border but the Nebraska compact statute was repealed before the proposition could be submitted to Congress.

The three remaining reasons advanced for denying relief herein apparently go to the sufficiency of the complaint to spell out specific parcels of land in dispute, their value and the cause of dispute.

As to the cause of dispute we can only speculate because we believe the lands in question belong to Missouri and no Nebraska official has ever given an explanation for Nebraska's claim to the lands. Regardless, this is a matter which can be best determined when a Special Master is appointed.

This is also true of the value involved. The matter of identifying the lands is taken up under the next heading.

II.

AMENDMENT TO COMPLAINT.

The lands known to be in dispute by the officials of the State of Missouri at the time of filing this amendment are as follows:

1. Property subject of a suit between private individuals (Durfee v. Duke, 1963, 375 U.S. 106). This land was accreted to the left bank (Missouri side) of the Missouri River and

consists of fractional portions of Sections 8, 9, and 10, Range 40 west of the Fifth Principle Meridian, Township 60, north of the Base Line. It lies south of the slough line and left of the main channel of the Missouri River as shown on Sheet No. 54, Missouri River, Rulo, Nebraska to Yankton, South Dakota, Series on file at the United States Engineers' Office, Omaha, Nebraska.

2. Lands owned by Peter Blohm previously accreted to the right bank of the Missouri River but severed from the right bank by an engineering realignment. This land consists of the fractional north half of the northeast fourth of Section 3, Range 40, west of the Fifth Principle Meridian, Township 61, north of the Base Line. The fractional south half of Section 3, Range 40 west of the Fifth Principle Meridian, Township 61, north of the Base Line. The fractional northeast fourth of Section 10, Range 40 west of the Fifth Principle Meridian, Township 61, north of the Base Line. These lands now lie to the right of the center of the existing main channel of the Missouri River and fall between the center line of the main channel as it existed in 1936 and the center line of the main channel after realignment at the point in question as indicated by comparing Corps of Engineers' Map Sheets No. 43R, October 28, 1936, revised to April 1, 1937 and No. 43R, August 29, 1938, revised to August 3, 1939.

These lands have been entered and are being cultivated by individuals who pay taxes thereon in Nebraska.

3. Lands belonging to Glenn Haer, beginning at a point on the west prolongation of the north line of the east half of the northwest fourth of Section 8, which is 6120 feet more or less west of the north fourth corner of said Section 8.

Thence southeasterly along the center line of a well defined slough to a point on the west prolongation of the East/

West Center Line of said Section 8 which is 4360 feet more or less west of the center of said Section 8.

Thence east along the west prolongation of the East/West Center Line of Section 8 a distance of 3700 feet more or less to a point on the right bank of the existing Missouri River Channel.

Thence northwesterly following the right high bank of the Missouri River Channel as now existing 3180 feet more or less to a point on the north line of the west half northwest fourth of Section 8 which is 2200 feet more or less west of the north fourth corner said Section 8.

Thence west along the west prolongation of the north line of the northwest fourth Section 8 a distance of 3920 feet more or less to the place of beginning containing 189 acres more or less. This land, formerly attached to the Missouri high bank has been isolated to the right of the main channel of the Missouri River by work of the Corps of Engineers and has subsequently been sold under Nebraska tax sales.

4. The property of Alex and Arthur Vogel, lands accreted to the Missouri high bank but subject of Otoe County, Nebraska tax actions and sales. These are fractional portions of Sections 10, 15, and 22, Range 43 west of the Fifth Principle Meridian, Township 66, north of the Base Line containing 605.57 acres.

5. The property of E. B. Nennemann, approximately 433.57 acres located in the southeast fourth of the northwest fourth of Section 13 and the northeast fourth of the southwest fourth of Section 13, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line.

This property has been subject of a Nebraska tax suit.

6. The property of Gene Fender, subject to a Nebraska tax suit, but being Missouri accretion ground, consisting of

549.19 acres, the fractional west fourth of Section 12, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line. The same being accretions to lots 1, 2, and 3 of the fractional northeast fourth of Section 12, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line.

7. The property of Raymond Hodde, Missouri accretion land, subject to Nebraska tax sales, and located in Sections 2 and 11, Range 43, west of the Fifth Meridian, Township 66, north of the Base Line.

8. The property of Alma Winkler, consisting of 167.6 acres of Missouri accretion land subject of a Nebraska tax suit described as part of the southern half of the northwest fourth of Section 14 of the north part of the southwest fourth of Section 14, Range 43, west of the Fifth Principle Meridian, Township 66, north of the Base Line.

CONCLUSION.

An action cognizable in this court having been stated with particularity, the defendant should be required to answer.

Respectfully submitted,

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